

APPEAL NO. 041331
FILED JULY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 14, 2004. The hearing officer determined that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the seventh and ninth quarters but was entitled to SIBs for the eighth quarter. The hearing officer's determination regarding the eighth quarter has not been appealed and has become final. Section 410.169.

The claimant appeals the determination for the seventh and ninth quarters on a sufficiency of the evidence basis. The respondent self-insured (carrier herein) responds, urging affirmance.

DECISION

Reversed and remanded.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant appeals, contending entitlement on the dual theories of a good faith job search pursuant to Rule 130.102(d)(5) and (e) and participating in a Texas Rehabilitation Commission (TRC) program pursuant to Rule 130.102(d)(2). At issue is the good faith effort to obtain employment commensurate with the ability to work. Section 408.142(a)(4) and Rule 130.102(b)(2).

The claimant, a 59 year old custodian at one of the employer's schools, sustained a compensable left shoulder injury and had shoulder surgery. Other eligibility criteria for SIBs were met. The qualifying periods were April 22 through July 21, 2003, for the seventh quarter and October 21, 2003, through January 18, 2004, for the ninth quarter. The hearing officer found that the claimant had not documented job searches during two weeks of the seventh quarter qualifying period and while making 29 job contacts during the ninth quarter qualifying period several contacts "were places the Claimant contacted in the previous two quarters." See Rule 130.102(e) for the criteria for a good faith job search.

Although the hearing officer notes that the claimant was assigned a counselor by the TRC, and the counselor assisted the claimant "with completing his application for SIBs for the seventh quarter," the hearing officer failed to comment or make findings regarding whether the claimant may have satisfied the requirements of Rule 130.102(d)(2). That rule provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. In evidence

is an Individualized Plan for Employment for services to be rendered from May 3, 2002, to May 3, 2003. The TRC was to provide counseling and guidance/placement assistance, and services leading to supported employment including job placement and job skills training. The claimant's responsibility was to apply for services to assist in reaching his employment goals, job search follow-up on job leads and follow doctor recommendations. The hearing officer noted that a TRC counselor assisted the claimant in completing his application and documenting his job searches (the claimant has very limited reading and writing skills and IQ). Documents indicated that this particular counselor continued to assist the claimant throughout the seventh quarter qualifying period. Other TRC documents dated July 16 and October 18, 2003, indicate that the claimant was doing at least follow-up contact with the TRC. In a similar form letter dated January 16, 2004, another TRC counselor added the hand written notation; "Client has been with TRC from 03/12/2002 till to date. He is participating in services at this time."

The good faith criteria may be met in a number of ways and compliance with any one subsection of Rule 130.102(d) will establish good faith. Texas Workers' Compensation Commission Appeal No. 001099, decided June 21, 2000.

We are remanding the case to the hearing officer for her to make findings and conclusions whether the claimant's contact with the TRC during the qualifying periods of the seventh and ninth quarters satisfies the requirements of Rule 130.102(d)(2). No additional hearing on remand need be convened although the hearing officer may, at her discretion, allow additional written argument.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**PRESIDENT BOARD OF TRUSTEES
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge